

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ARTHUR LAYTEN,)	
)	
Plaintiff,)	
)	
v.)	No. 4:10CV212 HEA
)	
STEVE LARKINS, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Arthur Layten (registration no. 1077053), an inmate at Eastern Reception Diagnostic and Correctional Center, for leave to commence this action without payment of the required filing fee [Doc. #2]. For the reasons stated below, the Court finds that plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$6.61. See 28 U.S.C. § 1915(b)(1).

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After

payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$33.04, and an average monthly balance of \$15.47. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$6.61, which is 20 percent of plaintiff's average monthly deposit.

Additionally, the Court notes that plaintiff originally filed this action with two other plaintiffs. *See Stauffer v. Larkins*, 4:10CV99 JCH (E.D. Mo.). The Court struck plaintiff from that action because prisoners proceeding in forma pauperis may not join together under Rule 20. Because plaintiff did not appear as the lead plaintiff in the original case, the Court will allow plaintiff, if he wishes, to file an amended complaint within thirty days of the date of this Order. If plaintiff files an amended complaint, he is warned that it will supercede the original complaint and will be the only complaint this Court reviews. If plaintiff does not file an amended complaint, the Court will

review the original complaint under 28 U.S.C. § 1915(e) as soon as the initial partial filing fee is paid.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$6.61 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that if plaintiff chooses to file an amended complaint, he must do so no later than thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED that if plaintiff fails to comply with this Order, this action will be dismissed without prejudice.

Dated this 16th day of February, 2010.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE